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PATENT APPLICATION

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER: VIREN A. THAKUR

In re application of: Aaron Strand)
et al.)

Application No: 09/804,403)

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For: A RESEALABLE BAG FOR
FILLING WITH FOOD
PRODUCT(S) AND METHOD

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APPELLANT'S APPEAL BRIEF

Sir:

This is an Appeal Brief in support of the Appeal from the final rejection mailed
September 5, 2008, pursuant to 37 C.F.R. §41.37.

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I. Real Party in Interest

The real party in interest of the patent application that is the subject of this appeal is Sargento Foods Inc., the recorded assignee of the entire right, title and interest of the subject application.

II. Related Appeals and Interferences

There is an appeal pending regarding U.S. Application No. 10/300,355, a division of the present application. There was also an interference regarding U.S. Patent No. 6,360,513, of which the present application is a division. A copy of the order resulting from Patent Interference No. 105,529 is attached in the Related Proceedings Appendix.

III. Status of Claims

This is an appeal from the Office Action mailed September 5, 2008, finally rejecting Claims 1, 2, 6-9, 14, 16, 18, 19, 75, 79, 82-86, 93, 104, 107-112, 122-128, and 130-147. All of these claims are on appeal.

Claims 3-5, 10-13, 15, 17, 20-74, 76-78, 80-81, 87-92, 94-103, 105-106, 113-121, and 129 were previously cancelled.

No claims were withdrawn.

IV. Status of Amendments

The Appellant has filed no amendment subsequent to the final rejection.

V. Summary of Claimed Subject Matter

Fifty (50) claims including five (5) independent claims directed towards a reclosable bag for filling with at least one food product are involved in this appeal. Appellants regards as their invention a reclosable bag comprising a single sheet of web material with a fold therein which defines two opposite sides of the reclosable bag. Proximate the fold and on opposite sides of the fold are two areas of structural weakness. The ends of the web material define an opening distal to the fold. The bag also comprises a reclosable fastener structure with two releasably engageable tracks each having a skirt structure extending therefore. The fastener structure is located in the fold with the skirt structures extending toward the opening. The skirt structures have distal margins. The fastener structure also has a notch located at each end of the fastener. The notches define a corner portion where the end of the releasably engageable tracks has been removed. The periphery of these notches has been sealed.

The distal margins of the skirt structures are respectively coupled to the web material on opposite sides of the bag at opposed locations located between the areas of structure weakness and the opening. The releasably engageable tracks extend past the areas of structural weakness and up into the fold structure. The two opposite sides of the bag are sealed, the bag is filled with food through the opening, and the opening is sealed.

A concise explanation of the subject matter defined in each of the five independent claims will be described below, together with references to the specification of the application as filed by page and line number, and to the drawings by reference numerals. Each subsequent reference to a claim term typically includes the reference character for ready reference. There is no intent to limit the claims in any manner by references, as this section is merely being included to comply with the Appeal rules.

A. Independent Claim 1

A reclosable bag (pg. 23, line 15, FIG. 7, Reference No. 100) for filling with at least one food product, said reclosable bag comprising:

a single sheet of web material (pg. 23, lines 5-6, FIG. 7, Reference No. 10) having first, second, third, and fourth edges wherein said first and second edges are respectively located opposite each other in said single sheet of web material and said third and fourth edges are respectively located opposite each other in said single sheet of web material, said single sheet of web material comprising a fold (pg. 23, line 11, FIG. 8, Reference No. 11) located therein intermediate said first and second edges of said single sheet of web material to define two opposite sides (pg. 24, line 5, FIG. 8, Reference Nos. 35 and 36) of said reclosable bag, said single sheet of web material also having two areas of structural weakness (pg. 23, line 12, FIG. 8, Reference No. 12) that are respectively located on opposite sides of said fold, said first and second edges of said single sheet of web material being located adjacent each other to define an opening (pg. 22, line 12,

FIG. 7, Reference No. 33) therebetween which is distally located with respect to said fold; and

a reclosable fastener structure (pg. 23, lines 10-11, FIG. 7, Reference No. 20) having first and second opposite ends and comprising two releasably engageable tracks each having a skirt structure (pg. 23, line 23, FIG. 8, Reference No. 16) of skirt web material extending therefrom, said reclosable fastener structure being located in said fold with said skirt structures respectively extending toward said first and second edges of said single sheet of web material;

said skirt structures each including a distal margin;

wherein said reclosable fastener structure has a notch (pg. 21, line 23, FIG. 7, Reference No. 22a) located at a corner at each of said first and second ends, said notches defining where a corner portion (pg. 21, lines 19-24) of said reclosable fastener structure that includes an end portion of said releasably engageable tracks has been removed, and wherein the periphery of said notches has been sealed (pg. 21, lines 25-27, FIG. 7, Reference No. 22b);

said distal margins of said skirt structures being respectively coupled (pg. 23, lines 27-28, FIG. 8, Reference Nos. 40 and 40a) to said web material on said opposite sides of said reclosable bag at opposed locations which are respectively located between said areas of structural weakness and said opening;

said releasably engageable tracks of said reclosable fastener structure extending past (pg. 21, lines 16-17) said areas of structural weakness and into said fold structure;

said two opposite sides of said reclosable bag being sealed (pg. 22, lines 6-10, FIG. 7, Reference No. 30a) at said first and second edges of said single sheet of web material to define sides of said reclosable bag, said reclosable bag being capable of being filled with at least one food product (pg. 22, lines 10-12) through said opening (pg. 22, lines 12-13, FIG. 7, Reference No. 33) intermediate said first and second edges of said single sheet of web material, following which said first and second edges of said single sheet of web material are sealed together (pg. 22, lines 14-15, FIG. 7, Reference No. 34a) to enclose the at least one food product inside said reclosable bag.

B. Independent Claim 75

A pre-packaged cheese bag (pg. 23, line 15, FIG. 7, Reference No. 100), said pre-packaged cheese bag comprising:

a single sheet of web material (pg. 23, lines 5-6, FIG. 7, Reference No. 10) having first and second pairs of opposite edges, said first pair of opposite edges being located adjacent each other to define a bottom of said bag, a fold structure (pg. 23, line 11, FIG. 8, Reference No. 11) located midway between said first pair of opposite edges in said single sheet of web material defining a top of said bag with said second pair of opposite edges respectively defining two opposite sides of said bag, two predetermined tear areas (pg. 23, line 12, FIG. 8, Reference No. 12) being located essentially parallel to and on opposite sides of said fold structure, an opening (pg. 22, line 12, FIG. 7, Reference No. 33) being defined between said first pair of opposite edges;

a reclosable fastener structure (pg. 23, lines 10-11, FIG. 7, Reference No. 20) having first and second opposite ends and including two releasably engageable fastener tracks each having a skirt structure (pg. 21, lines 18-19, FIG. 3, Reference No. 16) of skirt web material extending therefrom, said skirt structures each including a distal margin, said reclosable fastener structure having a notch (pg. 21, line 23, FIG. 7, Reference No. 22a) located at a corner at each of said first and second ends, said notches defining where a corner portion (pg. 21, lines 19-24) of said reclosable fastener structure that includes an end portion of said engageable fastener tracks has been removed, and wherein the periphery of said notches has been sealed (pg. 21, lines 25-27, FIG. 7, Reference No. 22b), said distal margins of said skirt structures being respectively coupled (pg. 23, lines 27-28, FIG. 8, Reference Nos. 40 and 40a) to said web material on said opposite sides of said bag at predetermined locations on the sides of said bag which are located intermediate said predetermined tear areas and said first pair of opposite edges; wherein said fastener tracks extend above (pg. 21, lines 16-17) said tear areas into said fold structure;

said two opposite sides of said bag being respectively sealed (pg. 22, lines 6-10, FIG. 7, Reference No. 30a) at said first and second edges to define sides of said bag, said pre-packaged cheese bag being filled with at least one cheese (pg. 22, lines 10-12) through said opening (pg. 22, lines 12-13, FIG. 7, Reference No. 33) between said first pair of opposite edges of said sheet of web material, following which said first pair of

opposite edges of said sheet of web material are sealed together (pg. 22, lines 14-15, FIG. 7, Reference No. 34a) to enclose the at least one cheese inside said bag.

C. Independent Claim 104

A reclosable bag (pg. 23, line 15, FIG. 7, Reference No. 100) for filling with at least one food product, said reclosable bag comprising:

a single rectangular sheet of web material (pg. 23, lines 5-6, FIG. 7, Reference No. 10) having first, second, third, and fourth edges, said sheet of web material having a fold structure (pg. 23, line 11, FIG. 8, Reference No. 11) located midway between said first and second edges and two areas of structural weakness (pg. 23, line 12, FIG. 8, Reference No. 12) which are located in said sheet of web material on opposite sides of said fold structure, said fold structure separating said sheet of web material into front and back sides (pg. 24, line 5, FIG. 8, Reference Nos. 35 and 36) of said reclosable bag, said first and second edges being located adjacent each other to define an opening (pg. 22, line 12, FIG. 7, Reference No. 33) therebetween which opening is distally located with respect to said fold;

a reclosable fastener structure (pg. 23, lines 10-11, FIG. 7, Reference No. 20) having first and second opposite ends and having two releasably engageable fastener halves each having a skirt structure (pg. 23, line 23, FIG. 8, Reference No. 16) of skirt web material extending therefrom, said skirt structures each having a distal margin, said reclosable fastener structure having a notch (pg. 21, line 23, FIG. 7, Reference No. 22a)

located at a corner at each of said first and second ends, said notches defining where a corner portion (pg. 21, lines 19-24) of said reclosable fastener structure that includes an end portion of said engageable fastener tracks has been removed, and wherein the periphery of said notches has been sealed (pg. 21, lines 25-27, FIG. 7, Reference No. 22b), wherein said distal margin of said skirt structure of one of said fastener halves is coupled to said web material on said front side (pg. 23, lines 27-28, FIG. 8, Reference No. 40) of said reclosable bag between the one of said areas of structural weakness on said front side of said reclosable bag and said opening, and wherein said distal margin of said skirt structure of the other of said fastener halves is coupled to said web material on said back side (pg. 23, lines 27-28, FIG. 8, Reference No. 40a) of said reclosable bag between the one of said areas of structural weakness on said back side of said reclosable bag and said opening;

wherein said fastener halves of said reclosable fastener structure are located above (pg. 21, lines 16-17) said areas of structural weakness and within said fold structure;

said front and back sides of said reclosable bag being sealed at said first and second edges (pg. 22, lines 6-10, FIG. 7, Reference No. 30a), said reclosable bag being capable of being filled with at least one food product (pg. 22, lines 10-12) through said opening (pg. 22, lines 12-13, FIG. 7, Reference No. 33) between said first and second edges, following which said first and second edges are sealed together (pg. 22, lines 14-15, FIG. 7, Reference No. 34a) to enclose the at least one food product inside said reclosable bag.

D. Independent Claim 125

A reclosable bag (pg. 23, line 15, FIG. 7, Reference No. 100) for filling with at least one food product, said reclosable bag comprising:

a single sheet of web material (pg. 23, lines 5-6, FIG. 7, Reference No. 10) having a centrally located fold (pg. 23, line 11, FIG. 8, Reference No. 11) separating said sheet of web material into a front panel and a rear panel (pg. 24, line 5, FIG. 8, Reference Nos. 35 and 36);

said front panel having a top, a bottom, and sides;

said rear panel having a top, a bottom, and sides, said tops of said front and rear panels coinciding at said fold, said sides of said front and rear panels being coupled together (pg. 22, lines 6-10, FIG. 7, Reference No. 30a), an opening (pg. 22, lines 12-13, FIG. 7, Reference No. 33) being located between said bottoms of said front and rear panels;

an area of structural weakness (pg. 23, line 12, FIG. 8, Reference No. 12) located in each of said front and rear panels below said tops of said front and rear panels and extending between at least a substantial portion of said sides of said front and rear panels, the portion of said sheet of web material located intermediate said areas of structural weakness forming a tear off portion (pg. 22, line 20, FIG. 8, Reference No. 11); and

a reclosable fastener assembly (pg. 23, lines 10-11, FIG. 7, Reference No. 20) having first and second opposite ends and extending between said sides of said front and rear panels and comprising first and second interlockable fastener tracks each having a

skirt structure (pg. 23, line 23, FIG. 8, Reference No. 16) of skirt web material extending downwardly therefrom, said skirt structures each including a distal portion, said reclosable fastener assembly having a notch (pg. 21, line 23, FIG. 7, Reference No. 22a) located at a corner at each of said first and second ends, said notches defining where a corner portion (pg. 21, lines 19-24) of said reclosable fastener assembly that includes an end portion of said first and second interlockable fastener tracks has been removed, and wherein the periphery of said notches has been sealed (pg. 21, lines 25-27, FIG. 7, Reference No. 22b), said distal portion of said skirt structure of said first fastener track being oriented toward said opening and being coupled (pg. 23, line 28, FIG. 8, Reference No. 40) to said front panel below said area of structural weakness located in said front panel, said distal portion of said skirt structure of said second fastener track being oriented toward said opening and being coupled to said rear panel (pg. 23, line 28, FIG. 8, Reference No. 40a) below said area of structural weakness located in said rear panel;

wherein said first and second interlockable fastener tracks of said reclosable fastener assembly extend (pg. 21, lines 16-17) completely above said areas of structural weakness, and wherein said reclosable bag is capable of being filled with at least one food product (pg. 22, lines 10-12) through said opening.

E. Independent Claim 144

A reclosable bag (pg. 23, line 15, FIG. 7, Reference No. 100) for filling with at least one food product, said reclosable bag comprising:

a single sheet of web material (pg. 23, lines 5-6, FIG. 7, Reference No. 10) having first, second, third and fourth edges and including a fold structure (pg. 23, line 11, FIG. 8, Reference No. 11) which is centrally located therein midway between said first and second edges which fold structure separates said sheet of web material into front and rear sides (pg. 24, line 5, FIG. 8, Reference Nos. 35 and 36) of said reclosable bag, two predetermined tear areas (pg. 23, line 12, FIG. 8, Reference No. 12) being located in said sheet of web material on opposite sides of said fold structure and defining a tear off hood portion (pg. 22, line 20, FIG. 8, Reference No. 11) which is located intermediate said two predetermined tear areas, an opening being defined between said first and second edges; and

a reclosable fastener structure (pg. 21, lines 12-13, FIG. 3, Reference No. 20) having first and second opposite ends and including two releasably engageable fastener halves each having an integral skirt structure (pg. 23, line 23, FIG. 8, Reference No. 16) of skirt web material extending from a bottom side thereof, said integral skirt structures each having a distal margin, said reclosable fastener structure having a notch (pg. 21, line 23, FIG. 7, Reference No. 22a) located at a corner at each of said first and second ends, said notches defining where a corner portion (pg. 21, lines 19-24) of said reclosable fastener structure that includes an end portion of said fastener halves has been removed, and wherein the periphery of said notches has been sealed (pg. 21, lines 25-27, FIG. 7, Reference No. 22b), wherein said distal margin of said integral skirt structure of one of said fastener halves is oriented toward said opening and coupled (pg. 20, lines 24-26,

FIG. 8, Reference No. 40) to said web material between the one of said tear areas and said opening on said front side of said reclosable bag, and wherein said distal margin of said integral skirt structure of the other of said fastener halves is oriented toward said opening and coupled (pg. 23, line 28, FIG. 8, Reference No. 40a) to said web material between the other of said tear areas and said opening on said rear side of said reclosable bag;

wherein said fastener halves extend entirely above (pg. 21, lines 16-17) said areas of structural weakness into said tear off hood portion;

wherein said front and rear sides of said reclosable bag are sealed (pg. 22, lines 6-10, FIG. 7, Reference No. 30a) at said third and fourth edges;

wherein said tear off hood portion is capable of being removed by tearing along said areas of structural weakness; and

wherein said reclosable bag is capable of being filled with at least one food product (pg. 22, lines 10-12) through said opening (pg. 22, lines 12-13, FIG. 7, Reference No. 33) between said first and second edges of said sheet of web material, following which said between said first and second edges are sealed together to enclose the at least one food product inside said reclosable bag.

VI. Ground of Rejection to be Reviewed on Appeal

Whether Claims 1, 2, 6-9, 14, 18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-137, and 142-147 are patentable over Belmont et al. (U.S. 6,327,754) in view of

Stolmeier et al. (U.S. 6,257,763), and in further view of Herrington, Jr. et al. (U.S. 5,131,121), Buchman (U.S. 6,287,001), Morgan (U.S. 5,442,837), Van Erden et al. (U.S. 4,759,642), and Kuge et al. (U.S. 5,364,189) under 35 U.S.C. § 103(a).

VII. Argument

Prior to turning to the merits of the rejection, Appellants note the issue for the Board to decide in this appeal is whether the cited references render the subject matter of any of the rejected independent claims as a whole obvious within the meaning of 35 U.S.C. § 103(a). In deciding this issue, the Board needs to make that determination on the basis of the entire record, taking into account the relative persuasiveness of argument. As explained in In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992) (citations omitted):

"[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant.

"After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.

"If examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent."

Whether Claims 1, 2, 6-9, 14, 18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-137, and 142-147 are patentable over Belmont et al. (U.S. 6,327,754) in view of Stolmeier et al. (U.S. 6,257,763), and in further view of Herrington, Jr. et al.

(U.S. 5,131,121), Buchman (U.S. 6,287,001), Morgan (U.S. 5,442,837), Van Erden et al. (U.S. 4,759,642), and Kuge et al. (U.S. 5,364,189) under 35 U.S.C. §103(a).

1. The Examiner Has Failed to Present a Prima Facie Case of Obviousness.

To establish a *prima facie* case of obviousness, the Examiner must provide a clear articulation of reason(s) why the claimed invention would have been obvious. See MPEP 2143. There must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR v. Teleflex, 127 S. Ct. 1727, 1741 (2007)(citing to the Federal Circuit statement with approval). More specifically, the Examiner needs to articulate that there is some suggestion or motivation to modify the prior art, that there is a reasonable expectation of success, and that the prior art reference (or references when combined) teaches or suggests all the claim limitations. Indeed, simply identifying all of the elements in a claim in the prior art does not render a claim obvious. Ruiz v. A.B. Chance Co., 357 F.3d 1270, 1275 (Fed. Cir. 2004).

Cited References

Belmont et al.: The Belmont et al. reference teaches folding a web of packaging to form a bag. (See FIG. 3c, Reference Nos. 50 and 52.) There are no areas of weakness in the portion of the bag including the fold. A fastener 14 with slidably mounted slider 12 is positioned and sealed to one side of the bag. (See FIG. 3c and column 4, lines 36-40.)

The fastener 14 is illustrated in FIG. 4, where fins 28 and 34 are joined to the walls 16 and 18. The side of the bag is then sealed, product is placed into the opening, and the walls 16 and 18 are sealed together at the mouth 74, completely sealing the bag. Notch 63 is a discontinuity between the fasteners 14 of adjacent bags, however, the fin portions 28 and 34 (See FIG. 4) continue past the fasteners 14, remaining connected through to the subsequent bag. Because the bags are already completely sealed at this point, the Belmont et al. reference does not teach or suggest sealing the periphery of the notches. The configuration taught by the Belmont et al. reference results in a bag which must be unzipped, and further, a user must reach down below the zipper and attempt to tear apart fin portions 28 and 34, the fin portions inaccessibly located just as in many previous resealable bags, to access the contents of the bag.

Stolmeier et al.: The Stolmeier et al. reference teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 which constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off. FIGS. 7 and 7A particularly illustrate the separate pieces that must be used and attached to the bag to form the tamper evident sheet 60. FIGS. 8-15 again illustrate that closure 40, which resides inaccessibly below the zipper portion, must be ruptured before a user can access the contents of a bag. (See column 3, lines 29-67.)

Herrington, Jr. et al.: The Herrington, Jr. et al. reference teaches protruding end stops 30a and 30b for plastic reclosable fasteners. These end stops are provided to "engage the slider 10 and prevent movement of the slider past the respective ends of the bag." (See column 4, lines 27-29.) A double anvil arrangement ultrasonically smashes the zippers to form the end stops. (See column 4, lines 46-48.)

Buchman: The Buchman reference discloses a closure arrangement and method for retaining a slider device. FIG. 4 of the Buchman reference illustrates a region of ultrasonic crushing forming a seal along the edge of the bag.

Morgan: The Morgan reference was cited as "appear[ing] to show an end portion (figure 3, item 23) which is extended compared to the portion of the reclosable fastener that is above it."

Van Erden et al.: The Van Erden et al. references was cited by the Examiner as teaching "a diagonal shaped cut for the end which includes the end of the reclosable fastener structure (figure 2), which are also sealed together (figure 2, item 24)."

Kuge et al.: The Kuge et al. reference teaches a zippered gusset bag with a seal over the top and partially extending down the sides of the bag. In one embodiment, the sides are sealed and portions are then cut out of the sealed portion to provide inwardly recessed portions. (See column 6, lines 54-63.)

a. Separate Argument for independent Claim 1.

The Examiner has failed to provide a *prima facie* case of obviousness of independent Claim 1 under 35 U.S.C. § 103(a) based on the Belmont et al. reference in view of the Stolmeier et al. reference, the Herrington, Jr. et al. reference, the Buchman reference, the Morgan reference, the Van Erden et al. reference, and the Kuge et al. reference. The Examiner stated in the September 5, 2008, Office Action that independent Claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Belmont et al. reference and the Stolmeier et al. reference for the reasons given in the previous Office Action, mailed November 28, 2007, and in further view of the Herrington, Jr. et al. reference, the Buchman reference, the Morgan reference, the Van Erden et al. reference, and the Kuge et al. reference.

In the November 28, 2007, Office Action the Examiner rejected Claim 1 under 35 U.S.C. § 103(a) as being unpatentable over the Belmont et al. reference in view of the Stolmeier et al. reference for the reasons of record in the September 7, 2005, Office Action. The Examiner's rejections in the non-Final Rejection of September 7, 2005, are summarized below, since the Examiner incorporated these rejections by reference into subsequent office actions rather than explicitly enumerating these rejections in subsequent office actions.

In the September 7, 2005, Office Action the Examiner stated that the Belmont et al. reference teaches a cheese bag made of a single multilaminate web sheet with a fold structure. The Examiner stated that the Belmont et al. reference "teaches a tamper

evident seal may be provided by either sealing a bag end around the fastener such that the fastener extend [sic] into the sealed end or providing a line of weakness between skirt structures of the fastener tracks so that the ends are sealed together" The Examiner conceded, however, that the Belmont et al. reference fails to teach "a line weakness on either side of the fold such that the fastener extends above the line of weakness into the fold structure of the multilaminate film and the fastener extends about the line of weakness after removal of the fold section" September 7, 2005, Office Action, page 4, line 19 to page 5, line 5.

The Belmont et al. reference was cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include any areas of weakness in the portion of the bag that includes the fold. To attempt to overcome this deficiency, the Examiner added the Stolmeier et al. reference to the Belmont et al. reference to teach placing a hood formed of a tamper evident sheet 60 that is completely separate from the side walls 11 and 13 that constitute the material of the bag over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off. The Examiner suggested that the perforations on this separate hood be moved to the sidewalls of the bag in the Belmont et al. reference. In so doing, the separate hood would be entirely eliminated.

The Belmont et al. reference was also cited as allegedly teaching a notch "since the portion of the reclosable fastener structure that includes an end portion it [sic] is not

the same length as the rest of the fastener structure." September 5, 2008, Office Action, page 4, line 17 to page 5, line 3. The Belmont et al. reference, however, does not teach the concept of sealing the ends of the track of the reclosable fastener structure, which is expressly claimed in Claim 1: "wherein the periphery of said notches has been sealed" The Examiner has also overlooked the fact that the embodiment in which this feature is shown has no hood. The Examiner has combined two different elements from two different embodiments, one shown in FIG. 3a and one in FIG. 3c. To overcome these deficiencies, the Examiner added the Herrington, Jr. et al. reference, which was cited as teaching the concept of sealing the ends of the track of a reclosable fastener structure that does not include notches.

Claim 1 also states, among other limitations,

wherein said reclosable fastener structure has a notch located at a corner at each of said first and second ends, said notches defining where a corner portion of said reclosable fastener structure that includes an end portion of said releasably engageable tracks has been removed, and wherein the periphery of said notches has been sealed.

Appellants submit that, when properly combined, none of the references cited by the Examiner teach or suggest these limitations.

The Appellants respectfully submit that the Examiner's rejections are further deficient. Claim 1 specifically recites that "said releasably engageable tracks of said reclosable fastener structure" extend "past said areas of structural weakness and into said fold structure."

The Belmont et al. reference was cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include any areas of weakness in the portion of the bag including the fold. The Belmont et al. reference clearly does not teach a fastener extending beyond the areas of structural weakness into a fold structure, as required by Claim 1, because there simply are no areas of structural weakness in the Belmont et al. reference near the fastener. In fact, as the Examiner concedes, there are no areas of structural weakness disclosed throughout the reference. Therefore it is impossible for the fastener of the Belmont et al. reference to extend beyond the areas of structural weakness and into the fold structure because these simply do not exist in the Belmont et al. reference.

To overcome this limitation, the Examiner combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off.

One of ordinary skill in the art would immediately recognize that providing a sheet and attaching this sheet to function as a hood is very different from forming a fold with areas of weakness below a fastener structure. However, because the areas of structural weakness are specifically required by Claim 1 to be part of the web material in the present invention, the Examiner is forced to make the unintuitive proposal of taking the perforations 72 of the Stolmeier et al. reference from the completely separate sheet 60

and moving them to the web 52 of the Belmont et al. reference. (Presumably, one would then no longer need the hood.) One ordinarily skilled in the art would not do this, since it would require radical changes in the construction of both the Belmont et al. reference and the construction of the Stolmeier et al. reference.

It is also worth noting that wall panels 16 and 18 of the web 52 of the Belmont et al. reference are sealed to the fin portions 28 and 34 at locations that are very close to the profiles 26 and 32 of the reclosable fastener or zipper arrangement 14. Construction of the combination proposed by the Examiner would be untenable with a perforation at the close location of the Belmont et al. reference, since the high speed manufacturing equipment used to make the bags would tear the perforations during the process of creating the top seals 54 and 70. That is why the embodiment of both the present invention and the Stolmeier et al. reference locate the points of attachment of the element containing the perforations well away from the bottoms of the fastener members. Accordingly, one ordinarily skilled in the art would not make these combination and changes.

The Examiner conceded that "[r]egarding the sealing of the periphery of the notches, the combination of the prior art is not clear in this regard." September 5, 2008, Office Action page 5, lines 4-5. However, the Examiner stated that "sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art, as evidenced by Herrington, Jr. et al., in figure 1a, for instance."

The Examiner indicated in the September 5, 2008, Office Action that in FIG. 3a of the Belmont et al. reference a notch can be seen in the reclosable fastener illustrated. The Examiner stated that "this can be considered a notch since the portion of the reclosable fastener structure that includes an end portion it is not the same length as the rest of the fastener structure." Emphasis added. September 5, 2008, Office Action, page 4, line 19 to page 5, line 5.

The Examiner used the Herrington, Jr. et al. reference to show that "the concept of sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art." September 5, 2008, Office Action, page 5, lines 5-6. The Kuge et al. reference, the Buchman reference, the Morgan reference, and the Van Erden et al. reference are cited similarly.

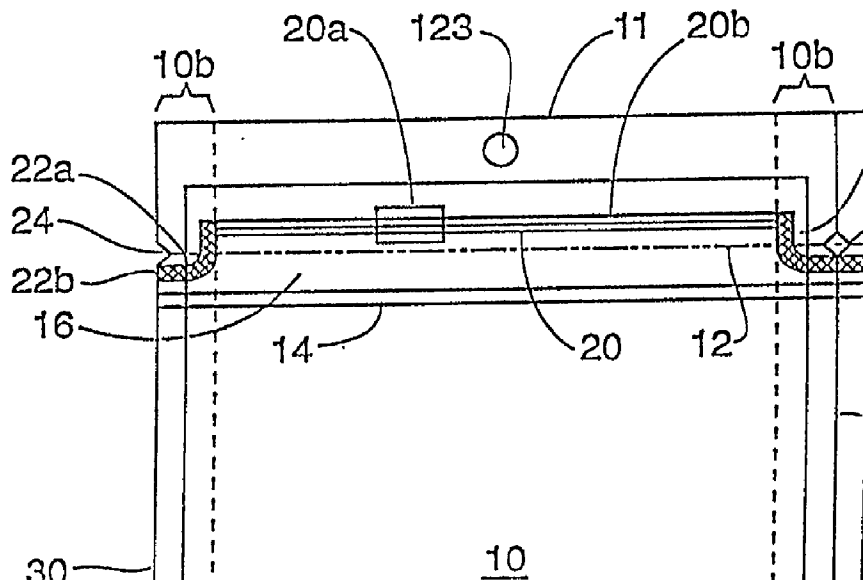
One of ordinary skill in the art would not be compelled to look to combine the Belmont et al. reference with the portions of any of the references cited by the Examiner to allegedly teach sealing, because sealing the notch 63 of the Belmont et al. reference would be completely unnecessary, since the Belmont et al. reference is already completely closed and thus does not require sealing. This also highlights the differences between what can be "considered a notch" in the Belmont et al. reference and the notch in Claim 1 the present application. The notch 63 in the Belmont et al. reference is actually only a portion of the fins 28 and 34 projecting farther horizontally than the fastener. There is no need to seal this notch, as there is nothing to seal.

One ordinarily skilled in the art would not look to the references cited by the Examiner to find a seal, as in the Herrington, Jr. et al. reference, to combine with a bag that does not need to be sealed like the Belmont et al. reference. There is no motivation to combine a sealing step with a reference such as the Belmont et al. reference that does not require sealing. Therefore, not only is the notch 63 of the Belmont et al. reference very different from the notch of the present application, but one of ordinary skill in the art would never combine the Belmont et al. reference with the Herrington, Jr. et al. reference, the Kuge et al. reference, the Buchman reference, the Morgan reference, or the Van Erden et al. reference.

Moreover, Claim 1 requires:

wherein said reclosable fastener structure has a notch located at a corner at each of said first and second ends, said notches defining where a corner portion of said reclosable fastener structure that includes an end portion of said releasably engageable tracks has been removed, and wherein the periphery of said notches has been sealed.

Emphasis added. As is clearly illustrated in FIG. 7 (portion illustrated below) and in Claim 1, a corner portion of the fastener structure has been completely removed in the present invention. Therefore, the fastener structure does not extend across the portion 10b. The notch 22a left by the missing corner is sealed at 22b. The sides of the bag are sealed along the margin 10c so that the fastener structure does not extend to the margin 10c. None of the references cited by the Examiner disclose a notch with a sealed periphery as required by Claim 1 of the present application.



The Examiner cites no less than six references in an attempt to show that "the concept of sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art." However, Claim 1 of the present invention requires more than just sealing the end of the reclosable fastener track. Claim 1 instead requires an entire notch, as disclosed in the specification of the current application, and that the periphery of that notch be sealed, not just a seal located at the end of the reclosable fastener track. This results in a claim that is not fairly taught or suggested by the cited prior art.

FIG. 1a of the Herrington, Jr. et al. reference was cited by the Examiner as teaching that "a reclosable track 19 has a notch made therein, since it is not the same length as the rest of the fastener." September 5, 2008, Office Action page 5, lines 6-8. FIG. 1a of the Herrington, Jr. et al. reference illustrates that, while the reference provides

an end stop 30a for the fastener track, there is no notch with a sealed periphery disclosed, as required by Claim 1 of the present application. The end stop is formed by

clamping and sealing together the pair of flexible plastic strips 14, 15 and the facing sidewalls at a seal area at the opposite ends of the bag to reduce the material thickness of the pair of flexible plastic strips and the facing sidewalls of the bag sandwiched therebetween and concurrently increasing the thickness of the adjacent area of the reclosable fastener 11 adjacent the seal area to provide the protruding stop structure 30a and 30b from the fastener thereby providing protruding end stops 30a and 30b for preventing movement of the slider 10 past the ends of the bag.

Herrington, Jr. et al. reference column 4, lines 51-63. The Examiner specifically cited this portion of the Herrington, Jr. et al. reference as teaching the ends of the fastener tracks being fused together. This, however, is unrelated to sealing the periphery of a notch, as required by Claim 1 of the present application. The Herrington, Jr. et al. reference does not teach a notch as required by Claim 1 of the present application.

The Examiner went on to state that FIG. 2 of the Herrington, Jr. et al. reference shows that "the material which has been removed is part of the reclosable fastener track and also integrally includes the extending skirts (items 14 and 15)." September 5, 2008, Office Action page 5, lines 10-12. FIG. 2 of the Herrington, Jr. et al. reference shows the formation of the end stops 30a and 30b, and does not show formation of a notch or sealing of a notch's periphery, as is specifically required by Claim 1 of the present application.

The Examiner next cited FIG. 11 of the Kuge et al. reference "to teach wherein the reclosable fastener structure is sealed and has a not taken therefrom." September 5, 2008,

Office Action page 5, lines 13-14. The Kuge et al. reference states "side portions 28b of the bag body 10 positioned slightly inside the side edges thereof are fused and the side portions 28 are cut out with a predetermined small width along the side edges to provide the fused side portions 28b recessed inwardly of the bag body." Column 6, lines 45-49. The Kuge et al. reference teaches forming a thick seal along the side of a bag and slicing off the outer portion of the side of the bag to form a bag with the upper portion of its sides narrower than the rest of the bag body. This is completely different than the notch with the sealed periphery required by Claim 1. The Kuge et al. reference does not teach a notch as required by Claim 1 of the present application.

The Examiner next referenced the Buchman reference as "further evidence of the conventionality of sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64)." September 5, 2008, Office Action page 6, lines 1-4. Column 3, lines 48-50 of the Buchman reference state "in FIG. 4, it can be seen that there is a region of ultrasonic crushing forming a seal region along the edge 36." Again, there is no suggestion or teaching of a notch with a sealed periphery, as required by Claim 1. Instead, the Buchman reference ultrasonically smashes the region around the edge 36 and discloses no notch.

The Examiner next cited the Morgan reference as "appear[ing] to show an end portion (figure 3, item 23) which is extended compared to the portion of the reclosable fastener that is above it." September 5, 2008, Office Action page 6, lines 13-15. As the Morgan reference states, reference numeral 23 refers to an end stop, column 4, line 64,

not a notch with a sealed periphery as required by Claim 1 of the present application. The Morgan reference does not teach or suggest a notch with a sealed periphery as required by Claim 1 of the present application.

The Examiner next references the Van Erden et al. reference to teach "a diagonal shaped cut for the end which includes the end of the reclosable fastener structure (figure 2) which are also sealed together (figure 2, item 24)." September 5, 2008, Office Action page 6, line 21 to page 7, line 2. The seals 24 of the Van Erden et al. reference are spot seals along the ends of the zipper to "strengthen the ends of the zipper at the chamfer seals 23." Again, spot sealing the end of a zipper is not providing a peripherally sealed notch as required by Claim 1 of the present application.

Finally, the Examiner once again references the Kuge et al. reference to teach "another type of shape to the reclosable fastener and end of the bag." September 5, 2008, Office Action page 7, lines 2-3. As stated above, sealing the end of the fastener is not the same as providing a peripherally sealed notch as required by Claim 1.

Appellants believe that the Examiner has failed to present a *prima facie* case of obviousness. Therefore, independent Claim 1 is patentable over Belmont et al. (U.S. 6,327,754) in view of Stolmeier et al. (U.S. 6,257,763), and in further view of Herrington, Jr. et al. (U.S. 5,131,121), Buchman (U.S. 6,287,001), Morgan (U.S. 5,442,837), Van Erden et al. (U.S. 4,759,642), and Kuge et al. (U.S. 5,364,189) under 35 U.S.C. §103(a).

Dependent Claims 2, 6-9, 14, 16, 18, and 19, dependent from independent Claim 1, are also patentable as dependent from an allowable claim. See 35 U.S.C. § 112, para. 4. The rejections of Claims 1, 2, 6-9, 14, 16, 18, and 19 fail to present a *prima facie* case of obviousness, and it is apparent that these rejections are erroneous, and must be reversed.

b. Separate Argument for independent Claim 75.

The Examiner rejected independent Claim 75 with the same argument section as was used in rejecting independent Claim 1. Claim 75 states, in relevant portion and among other limitations, that a pre-packaged cheese bag comprises "two predetermined tear areas being located essentially parallel to and on opposite sides of said fold structure." Claim 75 also states, among other limitations, that the bag has notches and that the "periphery of said notches has been sealed." Finally, Claim 75 states, among other limitations, that the bag comprises fastener tracks that "extend above said tear areas into said fold structure."

The Belmont et al. reference is cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include any areas of weakness in the portion of the bag including the fold. To overcome this limitation, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the

Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off. The Examiner suggests that the perforations on this separate hood be moved to the sidewalls of the bag in the Belmont et al. reference.

The Belmont et al. reference is also cited as teaching a notch "since the portion of the reclosable fastener structure that includes an end portion it is not the same length as the rest of the fastener structure." The Belmont et al. reference, however, does not teach the concept of sealing the ends of the track of the reclosable fastener structure. To overcome this deficiency, the Examiner has combined the Belmont et al. reference with the Herrington, Jr. et al. reference, which is cited as teaching the concept of sealing the ends of the track of a reclosable fastener structure.

Appellants submit that, when properly combined, none of the references cited by the Examiner disclose these limitations.

The Belmont et al. reference is cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include tear areas in the portion of the bag including the fold. The Belmont et al. reference clearly does not teach a fastener extending beyond the areas of structural weakness into a fold structure, as required by Claim 75, because there simply are no areas of structural weakness in the Belmont et al. reference, as the Examiner concedes. Therefore it is impossible for the fastener of the Belmont et al. reference to extend beyond the tear areas of and into the fold structure because these simply do not exist in the Belmont et al. reference.

In an attempt to overcome this deficiency, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off.

One of ordinary skill in the art would immediately recognize that providing a sheet and attaching this sheet to function as a hood is very different from forming a fold with tear areas below fastener tracks. However, because the tear areas are specifically required by Claim 75 to be part of the web material in the present invention, the Examiner is forced to make the unintuitive proposal of taking the perforations 72 of the Stolmeier et al. reference from the completely separate sheet 60 and moving them to the web 52 of the Belmont et al. reference. (Presumably, one would then no longer need the hood.) One ordinarily skilled in the art would never do this, since it would require radical changes in both the construction of the Belmont et al. reference and the construction of the Stolmeier et al. reference.

It is also worth noting that wall panels 16 and 18 of the web 52 in the Belmont et al. reference are sealed to the fin portions 28 and 34 at locations that are very close to the profiles 26 and 32 of the reclosable fastener or zipper arrangement 14. Construction of the combination proposed by the Examiner would be completely untenable with a perforation at the close location of the Belmont et al. reference since the high speed

manufacturing equipment used to make the bags would tear the perforations during the process of creating the top seals 54 and 70. That is why both the embodiment of the present invention and the Stolmeier et al. reference locate the points of attachment of the element containing the perforations well away from the bottoms of the fastener members. Accordingly, one ordinarily skilled in the art would not make these combination and changes.

The Examiner conceded that the Belmont et al. reference was deficient "[r]egarding the sealing of the periphery of the notches, the combination of the prior art is not clear in this regard." September 5, 2008, Office Action page 5, lines 4-5. However, the Examiner stated that "sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art, as evidenced by Herrington, Jr. et al., in figure 1a, for instance." The Examiner combined the Belmont et al. reference with the Herrington, Jr. et al. reference to show that "the concept of sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art." September 5, 2008, Office Action, page 5, lines 5-6. The Kuge et al. reference, the Buchman reference, the Morgan reference, and the Van Erden et al. reference are cited similarly.

One of ordinary skill in the art would never look to combine the Belmont et al. reference with the portions of any of these references, cited by the Examiner as teaching sealing, because sealing the notch 63 of the Belmont et al. reference would be completely unnecessary, as the bag of the Belmont et al. reference is already completely closed and

thus does not require sealing. This fact also highlights the differences between what can be "considered a notch" in the Belmont et al. reference and the notch in the present application. The notch 63 in the Belmont et al. reference is really only the fins 28 and 34 projecting farther horizontally than the fastener. There is no need to seal this notch, as there is nothing to seal. One ordinarily skilled in the art would never look to the references cited by the Examiner to find a seal, as in the Herrington, Jr. et al. reference, to combine with a bag that does not need to be sealed like the Belmont et al. reference. There is no motivation to combine a sealing step with a reference such as the Belmont et al. reference that does not require sealing. Therefore, not only is the notch 63 of the Belmont et al. reference very different from the notch of the present application, but one of ordinary skill in the art would never combine the Belmont et al. reference with the Herrington, Jr. et al. reference, the Kuge et al. reference, the Buchman reference, the Morgan reference, or the Van Erden et al. reference.

FIG. 1a of the Herrington, Jr. et al. reference was cited by the Examiner as teaching that "a reclosable track 19 has a notch made therein, since it is not the same length as the rest of the fastener." September 5, 2008, Office Action page 5, lines 6-8.

FIG. 1a of the Herrington, Jr. et al. reference illustrates that, while the reference provides an end stop 30a for the fastener track, there is no notch with a sealed periphery disclosed, as required by Claim 75 of the present application. The end stop is formed by

clamping and sealing together the pair of flexible plastic strips 14, 15 and the facing sidewalls at a seal area at the opposite ends of the bag to reduce the material thickness of the pair of flexible plastic strips and the facing

sidewalls of the bag sandwiched therebetween and concurrently increasing the thickness of the adjacent area of the reclosable fastener 11 adjacent the seal area to provide the protruding stop structure 30a and 30b from the fastener thereby providing protruding end stops 30a and 30b for preventing movement of the slider 10 past the ends of the bag.

Herrington, Jr. et al. reference column 4, lines 51-63. The Examiner specifically cited this portion of the Herrington, Jr. et al. reference as teaching the ends of the fastener tracks being fused together. This, however, is unrelated to sealing the periphery of a notch, as required by Claim 75 of the present application. The Herrington, Jr. et al. reference does not teach a notch as required by Claim 75 of the present application.

The Examiner went on to state that FIG. 2 of the Herrington, Jr. et al. reference shows that "the material which has been removed is part of the reclosable fastener track and also integrally includes the extending skirts (items 14 and 15)." September 5, 2008, Office Action page 5, lines 10-12. FIG. 2 of the Herrington, Jr. et al. reference shows the formation of the end stops 30a and 30b, and does not show formation of a notch or sealing of a notch's periphery, as is specifically required by Claim 75 of the present application.

The Examiner next cited FIG. 11 of the Kuge et al. reference "to teach wherein the reclosable fastener structure is sealed and has a not taken therefrom." September 5, 2008, Office Action page 5, lines 13-14. The Kuge et al. reference states "side portions 28b of the bag body 10 positioned slightly inside the side edges thereof are fused and the side portions 28 are cut out with a predetermined small width along the side edges to provide the fused side portions 28b recessed inwardly of the bag body." Column 6, lines 45-49.

The Kuge et al. reference teaches forming a thick seal along the side of a bag and slicing off the outer portion of the side of the bag to form a bag with the upper portion of its sides narrower than the rest of the bag body. This is completely different than the notch with the sealed periphery required by Claim 75. The Kuge et al. reference does not teach a notch as required by Claim 75 of the present application.

The Examiner next referenced the Buchman reference as "further evidence of the conventionality of sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64)." September 5, 2008, Office Action page 6, lines 1-4. Column 3, lines 48-50 of the Buchman reference state "in FIG. 4, it can be seen that there is a region of ultrasonic crushing forming a seal region along the edge 36." Again, there is no suggestion or teaching of a notch with a sealed periphery, as required by Claim 75. Instead, the Buchman reference ultrasonically smashes the region around the edge 36 and discloses no notch.

The Examiner next cited the Morgan reference as "appear[ing] to show an end portion (figure 3, item 23) which is extended compared to the portion of the reclosable fastener that is above it." September 5, 2008, Office Action page 6, lines 13-15. As the Morgan reference states, reference numeral 23 refers to an end stop, column 4, line 64, not a notch with a sealed periphery as required by Claim 75 of the present application. The Morgan reference does not teach or suggest a notch with a sealed periphery as required by Claim 75 of the present application.

The Examiner next references the Van Erden et al. reference to teach "a diagonal shaped cut for the end which includes the end of the reclosable fastener structure (figure 2) which are also sealed together (figure 2, item 24)." September 5, 2008, Office Action page 6, line 21 to page 7, line 2. The seals 24 of the Van Erden et al. reference are spot seals along the ends of the zipper to "strengthen the ends of the zipper at the chamfer seals 23." Again, spot sealing the end of a zipper is not providing a peripherally sealed notch as required by Claim 75 of the present application.

Finally, the Examiner once again references the Kuge et al. reference to teach "another type of shape to the reclosable fastener and end of the bag." September 5, 2008, Office Action page 7, lines 2-3. As stated above, sealing the end of the fastener is not the same as providing a peripherally sealed notch as required by Claim 75.

Therefore, independent Claim 75 is patentable over Belmont et al. (U.S. 6,327,754) in view of Stolmeier et al. (U.S. 6,257,763), and in further view of Herrington, Jr. et al. (U.S. 5,131,121), Buchman (U.S. 6,287,001), Morgan (U.S. 5,442,837), Van Erden et al. (U.S. 4,759,642), and Kuge et al. (U.S. 5,364,189) under 35 U.S.C. §103(a). Dependent Claims 79, 82-86, and 93, dependent from independent Claim 75, are also patentable as dependent from an allowable claim. See 35 U.S.C. § 112, para. 4. The rejections of Claims 75, 79, 82-86, and 93 fail to present a *prima facie* case of obviousness, and it is apparent that these rejections are erroneous, and must be reversed.

c. Separate Argument for independent Claim 104.

The Examiner rejected independent Claim 104 with the same argument section as was used in rejecting independent Claims 1 and 75. Claim 104 states, in relevant portion and among other limitations, that a reclosable bag for filling with at least one food product comprises "two areas of structural weakness which are located in said sheet of web material on opposite sides of said fold structure." Claim 104 also states, among other limitations, that the bag has notches "wherein the periphery of said notches has been sealed." Finally, Claim 104 states, among other limitations, that the bag comprises fastener halves that are "located above said areas of structural weakness and within said fold structure."

The Belmont et al. reference is cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include any areas of weakness in the portion of the bag including the fold. To overcome this limitation, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off. The Examiner suggests that the perforations on this separate hood be moved to the sidewalls of the bag in the Belmont et al. reference.

The Belmont et al. reference is also cited as teaching a notch "since the portion of the reclosable fastener structure that includes an end portion it is not the same length as the rest of the fastener structure." The Belmont et al. reference, however, does not teach the concept of sealing the ends of the track of the reclosable fastener structure. To overcome this deficiency, the Examiner has combined the Belmont et al. reference with the Herrington, Jr. et al. reference, which is cited as teaching the concept of sealing the ends of the track of a reclosable fastener structure.

Appellants submit that, when properly combined, none of the references cited by the Examiner disclose these limitations.

The Belmont et al. reference is cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include tear areas in the portion of the bag including the fold. The Belmont et al. reference clearly does not teach a fastener extending beyond the areas of structural weakness into a fold structure, as required by Claim 104, because there simply are no areas of structural weakness in the Belmont et al. reference, as the Examiner concedes. Therefore it is impossible for the fastener of the Belmont et al. reference to extend beyond the tear areas of and into the fold structure because these areas of structural weakness simply do not exist in the Belmont et al. reference.

In an attempt to overcome this deficiency, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11

and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off.

One of ordinary skill in the art would immediately recognize that providing a sheet and attaching this sheet to function as a hood is very different from forming a fold with tear areas below fastener tracks. However, because the areas of structural weakness are specifically required by Claim 104 to be part of the web material in the present invention, the Examiner is forced to make the unintuitive proposal of taking the perforations 72 of the Stolmeier et al. reference from the completely separate sheet 60 and moving them to the web 52 of the Belmont et al. reference. (Presumably, one would then no longer need the hood.) One ordinarily skilled in the art would never do this, since it would require radical changes in both the construction of the Belmont et al. reference and the construction of the Stolmeier et al. reference.

It is also worth noting that wall panels 16 and 18 of the web 52 in the Belmont et al. reference are sealed to the fin portions 28 and 34 at locations that are very close to the profiles 26 and 32 of the reclosable fastener or zipper arrangement 14. Construction of the combination proposed by the Examiner would be completely untenable with a perforation at the close location of the Belmont et al. reference since the high speed manufacturing equipment used to make the bags would tear the perforations during the process of creating the top seals 54 and 70. That is why both the embodiment of the present invention and the Stolmeier et al. reference locate the points of attachment of the

element containing the perforations well away from the bottoms of the fastener members. Accordingly, one ordinarily skilled in the art would not make these combination and changes.

The Examiner conceded that the Belmont et al. reference was deficient "[r]egarding the sealing of the periphery of the notches, the combination of the prior art is not clear in this regard." September 5, 2008, Office Action page 5, lines 4-5. However, the Examiner stated that "sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art, as evidenced by Herrington, Jr. et al., in figure 1a, for instance." The Examiner combined the Belmont et al. reference with the Herrington, Jr. et al. reference to show that "the concept of sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art." September 5, 2008, Office Action, page 5, lines 5-6. The Kuge et al. reference, the Buchman reference, the Morgan reference, and the Van Erden et al. reference are cited similarly.

One of ordinary skill in the art would never look to combine the Belmont et al. reference with the portions of any of these references, cited by the Examiner as teaching sealing, because sealing the notch 63 of the Belmont et al. reference would be completely unnecessary, as the bag of the Belmont et al. reference is already completely closed and thus does not require sealing. This fact also highlights the differences between what can be "considered a notch" in the Belmont et al. reference and the notch in the present application. The notch 63 in the Belmont et al. reference is really only the fins 28 and 34

projecting farther horizontally than the fastener. There is no need to seal this notch, as there is nothing to seal. One ordinarily skilled in the art would never look to the references cited by the Examiner to find a seal, as in the Herrington, Jr. et al. reference, to combine with a bag that does not need to be sealed like the Belmont et al. reference. There is no motivation to combine a sealing step with a reference such as the Belmont et al. reference that does not require sealing. Therefore, not only is the notch 63 of the Belmont et al. reference very different from the notch of the present application, but one of ordinary skill in the art would never combine the Belmont et al. reference with the Herrington, Jr. et al. reference, the Kuge et al. reference, the Buchman reference, the Morgan reference, or the Van Erden et al. reference.

FIG. 1a of the Herrington, Jr. et al. reference was cited by the Examiner as teaching that "a reclosable track 19 has a notch made therein, since it is not the same length as the rest of the fastener." September 5, 2008, Office Action page 5, lines 6-8.

FIG. 1a of the Herrington, Jr. et al. reference illustrates that, while the reference provides an end stop 30a for the fastener track, there is no notch with a sealed periphery disclosed, as required by Claim 104 of the present application. The end stop is formed by

clamping and sealing together the pair of flexible plastic strips 14, 15 and the facing sidewalls at a seal area at the opposite ends of the bag to reduce the material thickness of the pair of flexible plastic strips and the facing sidewalls of the bag sandwiched therebetween and concurrently increasing the thickness of the adjacent area of the reclosable fastener 11 adjacent the seal area to provide the protruding stop structure 30a and 30b from the fastener thereby providing protruding end stops 30a and 30b for preventing movement of the slider 10 past the ends of the bag.

Herrington, Jr. et al. reference column 4, lines 51-63. The Examiner specifically cited this portion of the Herrington, Jr. et al. reference as teaching the ends of the fastener tracks being fused together. This, however, is unrelated to sealing the periphery of a notch, as required by Claim 104 of the present application. The Herrington, Jr. et al. reference does not teach a notch as required by Claim 104 of the present application.

The Examiner went on to state that FIG. 2 of the Herrington, Jr. et al. reference shows that "the material which has been removed is part of the reclosable fastener track and also integrally includes the extending skirts (items 14 and 15)." September 5, 2008, Office Action page 5, lines 10-12. FIG. 2 of the Herrington, Jr. et al. reference shows the formation of the end stops 30a and 30b, and does not show formation of a notch or sealing of a notch's periphery, as is specifically required by Claim 104 of the present application.

The Examiner next cited FIG. 11 of the Kuge et al. reference "to teach wherein the reclosable fastener structure is sealed and has a not taken therefrom." September 5, 2008, Office Action page 5, lines 13-14. The Kuge et al. reference states "side portions 28b of the bag body 10 positioned slightly inside the side edges thereof are fused and the side portions 28 are cut out with a predetermined small width along the side edges to provide the fused side portions 28b recessed inwardly of the bag body." Column 6, lines 45-49. The Kuge et al. reference teaches forming a thick seal along the side of a bag and slicing off the outer portion of the side of the bag to form a bag with the upper portion of its sides narrower than the rest of the bag body. This is completely different than the notch

with the sealed periphery required by Claim 104. The Kuge et al. reference does not teach a notch as required by Claim 104 of the present application.

The Examiner next referenced the Buchman reference as "further evidence of the conventionality of sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64)." September 5, 2008, Office Action page 6, lines 1-4. Column 3, lines 48-50 of the Buchman reference state "in FIG. 4, it can be seen that there is a region of ultrasonic crushing forming a seal region along the edge 36." Again, there is no suggestion or teaching of a notch with a sealed periphery, as required by Claim 104. Instead, the Buchman reference ultrasonically smashes the region around the edge 36 and discloses no notch.

The Examiner next cited the Morgan reference as "appear[ing] to show an end portion (figure 3, item 23) which is extended compared to the portion of the reclosable fastener that is above it." September 5, 2008, Office Action page 6, lines 13-15. As the Morgan reference states, reference numeral 23 refers to an end stop, column 4, line 64, not a notch with a sealed periphery as required by Claim 104 of the present application. The Morgan reference does not teach or suggest a notch with a sealed periphery as required by Claim 104 of the present application.

The Examiner next references the Van Erden et al. reference to teach "a diagonal shaped cut for the end which includes the end of the reclosable fastener structure (figure 2) which are also sealed together (figure 2, item 24)." September 5, 2008, Office Action page 6, line 21 to page 7, line 2. The seals 24 of the Van Erden et al. reference

are spot seals along the ends of the zipper to "strengthen the ends of the zipper at the chamfer seals 23." Again, spot sealing the end of a zipper is not providing a peripherally sealed notch as required by Claim 104 of the present application.

Finally, the Examiner once again references the Kuge et al. reference to teach "another type of shape to the reclosable fastener and end of the bag." September 5, 2008, Office Action page 7, lines 2-3. As stated above, sealing the end of the fastener is not the same as providing a peripherally sealed notch as required by Claim 104.

Therefore, independent Claim 104 is patentable over Belmont et al. (U.S. 6,327,754) in view of Stolmeier et al. (U.S. 6,257,763), and in further view of Herrington, Jr. et al. (U.S. 5,131,121), Buchman (U.S. 6,287,001), Morgan (U.S. 5,442,837), Van Erden et al. (U.S. 4,759,642), and Kuge et al. (U.S. 5,364,189) under 35 U.S.C. §103(a). Dependent Claims 107-112 and 122-124, dependent from independent Claim 104, are also patentable as dependent from an allowable claim. See 35 U.S.C. § 112, para. 4. The rejections of Claims 104, 107-112, and 122-124 fail to present a *prima facie* case of obviousness, and it is apparent that these rejections are erroneous, and must be reversed.

d. Separate Argument for independent Claim 125.

The Examiner rejected independent Claim 125 with the same argument section as was used in rejecting independent Claims 1, 75 and 104. Claim 125 states, in relevant portion and among other limitations, that a reclosable bag for filling with at least one food product comprises "an area of structural weakness located in each of said front and

rear panels below said tops of said front and rear panels and extending between at least a substantial portion of said sides of said front and rear panels, the portion of said sheet of web material located intermediate said areas of structural weakness forming a tear off portion." Claim 125 also states, among other limitations, that the bag has notches, "wherein the periphery of said notches has been sealed." Finally, Claim 125 states, among other limitations, that the bag comprises fastener tracks that extend "completely above said areas of structural weakness."

The Belmont et al. reference is cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include any areas of weakness in the portion of the bag including the fold. To overcome this limitation, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off. The Examiner suggests that the perforations on this separate hood be moved to the sidewalls of the bag in the Belmont et al. reference.

The Belmont et al. reference is also cited as teaching a notch "since the portion of the reclosable fastener structure that includes an end portion it is not the same length as the rest of the fastener structure." The Belmont et al. reference, however, does not teach the concept of sealing the ends of the track of the reclosable fastener structure. To

overcome this deficiency, the Examiner has combined the Belmont et al. reference with the Herrington, Jr. et al. reference, which is cited as teaching the concept of sealing the ends of the track of a reclosable fastener structure.

Appellants submit that, when properly combined, none of the references cited by the Examiner disclose these limitations.

The Belmont et al. reference is cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include areas of structural weakness in the portion of the bag including the fold. The Belmont et al. reference clearly does not teach a fastener extending beyond the areas of structural weakness into a fold structure, as required by Claim 125, because there simply are no areas of structural weakness in the Belmont et al. reference, as the Examiner concedes. Therefore it is impossible for the fastener of the Belmont et al. reference to extend beyond the areas of structural weakness and into the fold structure because these areas of structural weakness simply do not exist in the Belmont et al. reference.

In an attempt to overcome this deficiency, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off.

One of ordinary skill in the art would immediately recognize that providing a sheet and attaching this sheet to function as a hood is very different from forming a fold with tear areas below fastener tracks. However, because the tear areas are specifically required by Claim 125 to be part of the web material in the present invention, the Examiner is forced to make the unintuitive proposal of taking the perforations 72 of the Stolmeier et al. reference from the completely separate sheet 60 and moving them to the web 52 of the Belmont et al. reference. (Presumably, one would then no longer need the hood.) One ordinarily skilled in the art would never do this, since it would require radical changes in both the construction of the Belmont et al. reference and the construction of the Stolmeier et al. reference.

It is also worth noting that wall panels 16 and 18 of the web 52 in the Belmont et al. reference are sealed to the fin portions 28 and 34 at locations that are very close to the profiles 26 and 32 of the reclosable fastener or zipper arrangement 14. Construction of the combination proposed by the Examiner would be completely untenable with a perforation at the close location of the Belmont et al. reference since the high speed manufacturing equipment used to make the bags would tear the perforations during the process of creating the top seals 54 and 70. That is why both the embodiment of the present invention and the Stolmeier et al. reference locate the points of attachment of the element containing the perforations well away from the bottoms of the fastener members. Accordingly, one ordinarily skilled in the art would not make these combination and changes.

The Examiner conceded that the Belmont et al. reference was deficient "[r]egarding the sealing of the periphery of the notches, the combination of the prior art is not clear in this regard." September 5, 2008, Office Action page 5, lines 4-5. However, the Examiner stated that "sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art, as evidenced by Herrington, Jr. et al., in figure 1a, for instance." The Examiner combined the Belmont et al. reference with the Herrington, Jr. et al. reference to show that "the concept of sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art." September 5, 2008, Office Action, page 5, lines 5-6. The Kuge et al. reference, the Buchman reference, the Morgan reference, and the Van Erden et al. reference are cited similarly.

One of ordinary skill in the art would never look to combine the Belmont et al. reference with the portions of any of these references, cited by the Examiner as teaching sealing, because sealing the notch 63 of the Belmont et al. reference would be completely unnecessary, as the bag of the Belmont et al. reference is already completely closed and thus does not require sealing. This fact also highlights the differences between what can be "considered a notch" in the Belmont et al. reference and the notch in the present application. The notch 63 in the Belmont et al. reference is really only the fins 28 and 34 projecting farther horizontally than the fastener. There is no need to seal this notch, as there is nothing to seal. One ordinarily skilled in the art would never look to the references cited by the Examiner to find a seal, as in the Herrington, Jr. et al. reference, to

combine with a bag that does not need to be sealed like the Belmont et al. reference.

There is no motivation to combine a sealing step with a reference such as the Belmont et al. reference that does not require sealing. Therefore, not only is the notch 63 of the Belmont et al. reference very different from the notch of the present application, but one of ordinary skill in the art would never combine the Belmont et al. reference with the Herrington, Jr. et al. reference, the Kuge et al. reference, the Buchman reference, the Morgan reference, or the Van Erden et al. reference.

FIG. 1a of the Herrington, Jr. et al. reference was cited by the Examiner as teaching that "a reclosable track 19 has a notch made therein, since it is not the same length as the rest of the fastener." September 5, 2008, Office Action page 5, lines 6-8.

FIG. 1a of the Herrington, Jr. et al. reference illustrates that, while the reference provides an end stop 30a for the fastener track, there is no notch with a sealed periphery disclosed, as required by Claim 125 of the present application. The end stop is formed by

clamping and sealing together the pair of flexible plastic strips 14, 15 and the facing sidewalls at a seal area at the opposite ends of the bag to reduce the material thickness of the pair of flexible plastic strips and the facing sidewalls of the bag sandwiched therebetween and concurrently increasing the thickness of the adjacent area of the reclosable fastener 11 adjacent the seal area to provide the protruding stop structure 30a and 30b from the fastener thereby providing protruding end stops 30a and 30b for preventing movement of the slider 10 past the ends of the bag.

Herrington, Jr. et al. reference column 4, lines 51-63. The Examiner specifically cited this portion of the Herrington, Jr. et al. reference as teaching the ends of the fastener tracks being fused together. This, however, is unrelated to sealing the periphery of a

notch, as required by Claim 125 of the present application. The Herrington, Jr. et al. reference does not teach a notch as required by Claim 125 of the present application.

The Examiner went on to state that FIG. 2 of the Herrington, Jr. et al. reference shows that "the material which has been removed is part of the reclosable fastener track and also integrally includes the extending skirts (items 14 and 15)." September 5, 2008, Office Action page 5, lines 10-12. FIG. 2 of the Herrington, Jr. et al. reference shows the formation of the end stops 30a and 30b, and does not show formation of a notch or sealing of a notch's periphery, as is specifically required by Claim 125 of the present application.

The Examiner next cited FIG. 11 of the Kuge et al. reference "to teach wherein the reclosable fastener structure is sealed and has a not taken therefrom." September 5, 2008, Office Action page 5, lines 13-14. The Kuge et al. reference states "side portions 28b of the bag body 10 positioned slightly inside the side edges thereof are fused and the side portions 28 are cut out with a predetermined small width along the side edges to provide the fused side portions 28b recessed inwardly of the bag body." Column 6, lines 45-49. The Kuge et al. reference teaches forming a thick seal along the side of a bag and slicing off the outer portion of the side of the bag to form a bag with the upper portion of its sides narrower than the rest of the bag body. This is completely different than the notch with the sealed periphery required by Claim 125. The Kuge et al. reference does not teach a notch as required by Claim 125 of the present application.

The Examiner next referenced the Buchman reference as "further evidence of the conventionality of sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64)." September 5, 2008, Office Action page 6, lines 1-4. Column 3, lines 48-50 of the Buchman reference state "in FIG. 4, it can be seen that there is a region of ultrasonic crushing forming a seal region along the edge 36." Again, there is no suggestion or teaching of a notch with a sealed periphery, as required by Claim 125. Instead, the Buchman reference ultrasonically smashes the region around the edge 36 and discloses no notch.

The Examiner next cited the Morgan reference as "appear[ing] to show an end portion (figure 3, item 23) which is extended compared to the portion of the reclosable fastener that is above it." September 5, 2008, Office Action page 6, lines 13-15. As the Morgan reference states, reference numeral 23 refers to an end stop, column 4, line 64, not a notch with a sealed periphery as required by Claim 125 of the present application. The Morgan reference does not teach or suggest a notch with a sealed periphery as required by Claim 125 of the present application.

The Examiner next references the Van Erden et al. reference to teach "a diagonal shaped cut for the end which includes the end of the reclosable fastener structure (figure 2) which are also sealed together (figure 2, item 24)." September 5, 2008, Office Action page 6, line 21 to page 7, line 2. The seals 24 of the Van Erden et al. reference are spot seals along the ends of the zipper to "strengthen the ends of the zipper at the

chamfer seals 23." Again, spot sealing the end of a zipper is not providing a peripherally sealed notch as required by Claim 125 of the present application.

Finally, the Examiner once again references the Kuge et al. reference to teach "another type of shape to the reclosable fastener and end of the bag." September 5, 2008, Office Action page 7, lines 2-3. As stated above, sealing the end of the fastener is not the same as providing a peripherally sealed notch as required by Claim 125.

Therefore, independent Claim 125 is patentable over Belmont et al. (U.S. 6,327,754) in view of Stolmeier et al. (U.S. 6,257,763), and in further view of Herrington, Jr. et al. (U.S. 5,131,121), Buchman (U.S. 6,287,001), Morgan (U.S. 5,442,837), Van Erden et al. (U.S. 4,759,642), and Kuge et al. (U.S. 5,364,189) under 35 U.S.C. §103(a). Dependent Claims 126-128 and 130-143, dependent from independent Claim 125, are also patentable as dependent from an allowable claim. See 35 U.S.C. § 112, para. 4. The rejections of Claims 125, 126-128, and 130-143 fail to present a *prima facie* case of obviousness, and it is apparent that these rejections are erroneous and must be reversed.

e. Separate Argument for independent Claim 144.

The Examiner rejected independent Claim 144 with the same argument section as was used in rejecting independent Claims 1, 75, 104, and 125. Claim 144 states, in relevant portion and among other limitations, that a reclosable bag for filling with at least one food product comprises "two predetermined tear areas being located in said sheet of

web material on opposite sides of said fold structure and defining a tear off hood portion which is located intermediate said two predetermined tear areas." Claim 144 also states, among other limitations, that the bag has notches "wherein the periphery of said notches has been sealed." Finally, Claim 144 states, among other limitations, that the bag comprises fastener halves that are "located above said areas of structural weakness and within said fold structure."

The Belmont et al. reference is cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include any areas of weakness in the portion of the bag including the fold. To overcome this limitation, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off. The Examiner suggests that the perforations on this separate hood be moved to the sidewalls of the bag in the Belmont et al. reference.

The Belmont et al. reference is also cited as teaching a notch "since the portion of the reclosable fastener structure that includes an end portion it is not the same length as the rest of the fastener structure." The Belmont et al. reference, however, does not teach the concept of sealing the ends of the track of the reclosable fastener structure. To overcome this deficiency, the Examiner has combined the Belmont et al. reference with

the Herrington, Jr. et al. reference, which is cited as teaching the concept of sealing the ends of the track of a reclosable fastener structure.

Appellants submit that, when properly combined, none of the references cited by the Examiner disclose these limitations.

The Belmont et al. reference is cited as teaching a bottom-fill embodiment in FIG. 3C in which the fastener is located in the fold of the bag. However, the Belmont et al. reference does not include areas of structural weakness in the portion of the bag including the fold. The Belmont et al. reference clearly does not teach a fastener extending beyond the areas of structural weakness into a fold structure, as required by Claim 144, because there simply are no areas of structural weakness in the Belmont et al. reference, as the Examiner concedes. Therefore it is impossible for the fastener of the Belmont et al. reference to extend beyond the areas of structural weakness and into the fold structure because these areas of structural weakness simply do not exist in the Belmont et al. reference.

In an attempt to overcome this deficiency, the Examiner has combined the Belmont et al. reference with the Stolmeier et al. reference, which teaches placing a hood formed of a tamper evident sheet 60 (that is completely separate from the side walls 11 and 13 that constitute the material of the bag) over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations 72 located therein that allow the hood to be torn off.

One of ordinary skill in the art would immediately recognize that providing a sheet and attaching this sheet to function as a hood is very different from forming a fold with tear areas below fastener tracks. However, because the tear areas are specifically required by Claim 144 to be part of the web material in the present invention, the Examiner is forced to make the unintuitive proposal of taking the perforations 72 of the Stolmeier et al. reference from the completely separate sheet 60 and moving them to the web 52 of the Belmont et al. reference. (Presumably, one would then no longer need the hood.) One ordinarily skilled in the art would never do this, since it would require radical changes in both the construction of the Belmont et al. reference and the construction of the Stolmeier et al. reference.

It is also worth noting that wall panels 16 and 18 of the web 52 in the Belmont et al. reference are sealed to the fin portions 28 and 34 at locations that are very close to the profiles 26 and 32 of the reclosable fastener or zipper arrangement 14. Construction of the combination proposed by the Examiner would be completely untenable with a perforation at the close location of the Belmont et al. reference since the high speed manufacturing equipment used to make the bags would tear the perforations during the process of creating the top seals 54 and 70. That is why both the embodiment of the present invention and the Stolmeier et al. reference locate the points of attachment of the element containing the perforations well away from the bottoms of the fastener members. Accordingly, one ordinarily skilled in the art would not make these combination and changes.

The Examiner conceded that the Belmont et al. reference was deficient "[r]egarding the sealing of the periphery of the notches, the combination of the prior art is not clear in this regard." September 5, 2008, Office Action page 5, lines 4-5. However, the Examiner stated that "sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art, as evidenced by Herrington, Jr. et al., in figure 1a, for instance." The Examiner combined the Belmont et al. reference with the Herrington, Jr. et al. reference to show that "the concept of sealing the ends of the track of the reclosable fastener structure has been conventionally performed in the art." September 5, 2008, Office Action, page 5, lines 5-6. The Kuge et al. reference, the Buchman reference, the Morgan reference, and the Van Erden et al. reference are cited similarly.

One of ordinary skill in the art would never look to combine the Belmont et al. reference with the portions of any of these references, cited by the Examiner as teaching sealing, because sealing the notch 63 of the Belmont et al. reference would be completely unnecessary, as the bag of the Belmont et al. reference is already completely closed and thus does not require sealing. This fact also highlights the differences between what can be "considered a notch" in the Belmont et al. reference and the notch in the present application. The notch 63 in the Belmont et al. reference is really only the fins 28 and 34 projecting farther horizontally than the fastener. There is no need to seal this notch, as there is nothing to seal. One ordinarily skilled in the art would never look to the references cited by the Examiner to find a seal, as in the Herrington, Jr. et al. reference, to

combine with a bag that does not need to be sealed like the Belmont et al. reference.

There is no motivation to combine a sealing step with a reference such as the Belmont et al. reference that does not require sealing. Therefore, not only is the notch 63 of the Belmont et al. reference very different from the notch of the present application, but one of ordinary skill in the art would never combine the Belmont et al. reference with the Herrington, Jr. et al. reference, the Kuge et al. reference, the Buchman reference, the Morgan reference, or the Van Erden et al. reference.

FIG. 1a of the Herrington, Jr. et al. reference was cited by the Examiner as teaching that "a reclosable track 19 has a notch made therein, since it is not the same length as the rest of the fastener." September 5, 2008, Office Action page 5, lines 6-8.

FIG. 1a of the Herrington, Jr. et al. reference illustrates that, while the reference provides an end stop 30a for the fastener track, there is no notch with a sealed periphery disclosed, as required by Claim 144 of the present application. The end stop is formed by

clamping and sealing together the pair of flexible plastic strips 14, 15 and the facing sidewalls at a seal area at the opposite ends of the bag to reduce the material thickness of the pair of flexible plastic strips and the facing sidewalls of the bag sandwiched therebetween and concurrently increasing the thickness of the adjacent area of the reclosable fastener 11 adjacent the seal area to provide the protruding stop structure 30a and 30b from the fastener thereby providing protruding end stops 30a and 30b for preventing movement of the slider 10 past the ends of the bag.

Herrington, Jr. et al. reference column 4, lines 51-63. The Examiner specifically cited this portion of the Herrington, Jr. et al. reference as teaching the ends of the fastener tracks being fused together. This, however, is unrelated to sealing the periphery of a

notch, as required by Claim 144 of the present application. The Herrington, Jr. et al. reference does not teach a notch as required by Claim 144 of the present application.

The Examiner went on to state that FIG. 2 of the Herrington, Jr. et al. reference shows that "the material which has been removed is part of the reclosable fastener track and also integrally includes the extending skirts (items 14 and 15)." September 5, 2008, Office Action page 5, lines 10-12. FIG. 2 of the Herrington, Jr. et al. reference shows the formation of the end stops 30a and 30b, and does not show formation of a notch or sealing of a notch's periphery, as is specifically required by Claim 144 of the present application.

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The Examiner next referenced the Buchman reference as "further evidence of the conventionality of sealing the ends of the reclosable fastener tracks together (figure 4 and column 3, lines 57-64)." September 5, 2008, Office Action page 6, lines 1-4. Column 3, lines 48-50 of the Buchman reference state "in FIG. 4, it can be seen that there is a region of ultrasonic crushing forming a seal region along the edge 36." Again, there is no suggestion or teaching of a notch with a sealed periphery, as required by Claim 144. Instead, the Buchman reference ultrasonically smashes the region around the edge 36 and discloses no notch.

The Examiner next cited the Morgan reference as "appear[ing] to show an end portion (figure 3, item 23) which is extended compared to the portion of the reclosable fastener that is above it." September 5, 2008, Office Action page 6, lines 13-15. As the Morgan reference states, reference numeral 23 refers to an end stop, column 4, line 64, not a notch with a sealed periphery as required by Claim 144 of the present application. The Morgan reference does not teach or suggest a notch with a sealed periphery as required by Claim 144 of the present application.

The Examiner next references the Van Erden et al. reference to teach "a diagonal shaped cut for the end which includes the end of the reclosable fastener structure (figure 2) which are also sealed together (figure 2, item 24)." September 5, 2008, Office Action page 6, line 21 to page 7, line 2. The seals 24 of the Van Erden et al. reference are spot seals along the ends of the zipper to "strengthen the ends of the zipper at the

chamfer seals 23." Again, spot sealing the end of a zipper is not providing a peripherally sealed notch as required by Claim 144 of the present application.

Finally, the Examiner once again references the Kuge et al. reference to teach "another type of shape to the reclosable fastener and end of the bag." September 5, 2008, Office Action page 7, lines 2-3. As stated above, sealing the end of the fastener is not the same as providing a peripherally sealed notch as required by Claim 144.

Therefore, independent Claim 144 is patentable over Belmont et al. (U.S. 6,327,754) in view of Stolmeier et al. (U.S. 6,257,763), and in further view of Herrington, Jr. et al. (U.S. 5,131,121), Buchman (U.S. 6,287,001), Morgan (U.S. 5,442,837), Van Erden et al. (U.S. 4,759,642), and Kuge et al. (U.S. 5,364,189) under 35 U.S.C. §103(a). Dependent Claims 145-147, dependent from independent Claim 144, are also patentable as dependent from an allowable claim. See 35 U.S.C. § 112, para. 4. The rejections of Claims 144 and 145-147 fail to present a *prima facie* case of obviousness, and it is apparent that these rejections are erroneous, and must be reversed.

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VIII. Conclusion

In view of the foregoing, the Appellants submit that claims 1, 2, 6-9, 14, 16, 18, 19, 75, 79, 82-86, 93, 104, 107-112, 122-128, and 130-147 are not properly rejected as being obvious under 35 U.S.C. §103(a). For the foregoing reasons, the Appellants respectfully request the Board reverse the claim rejections and order that a Notice of Allowance respecting all pending claims be issued.

Respectfully submitted:

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1 **IX. Claims Appendix**

2 1. A reclosable bag for filling with at least one food product, said reclosable bag
3 comprising:

4 a single sheet of web material having first, second, third, and fourth edges wherein
5 said first and second edges are respectively located opposite each other in said single
6 sheet of web material and said third and fourth edges are respectively located opposite
7 each other in said single sheet of web material, said single sheet of web material
8 comprising a fold located therein intermediate said first and second edges of said single
9 sheet of web material to define two opposite sides of said reclosable bag, said single sheet
10 of web material also having two areas of structural weakness that are respectively located
11 on opposite sides of said fold, said first and second edges of said single sheet of web
12 material being located adjacent each other to define an opening therebetween which is
13 distally located with respect to said fold; and

14 a reclosable fastener structure having first and second opposite ends and
15 comprising two releasably engageable tracks each having a skirt structure of skirt web
16 material extending therefrom, said reclosable fastener structure being located in said fold
17 with said skirt structures respectively extending toward said first and second edges of
18 said single sheet of web material;

19 said skirt structures each including a distal margin;

20 wherein said reclosable fastener structure has a notch located at a corner at each of
21 said first and second ends, said notches defining where a corner portion of said reclosable

22 fastener structure that includes an end portion of said releasably engageable tracks has
23 been removed, and wherein the periphery of said notches has been sealed;
24 said distal margins of said skirt structures being respectively coupled to said web material
25 on said opposite sides of said reclosable bag at opposed locations which are respectively
26 located between said areas of structural weakness and said opening;
27 said releasably engageable tracks of said reclosable fastener structure extending past said
28 areas of structural weakness and into said fold structure;
29 said two opposite sides of said reclosable bag being sealed at said first and second edges
30 of said single sheet of web material to define sides of said reclosable bag, said reclosable
31 bag being capable of being filled with at least one food product through said opening
32 intermediate said first and second edges of said single sheet of web material, following
33 which said first and second edges of said single sheet of web material are sealed together
34 to enclose the at least one food product inside said reclosable bag.

- 1 2. A reclosable bag as defined in Claim 1, wherein the skirt web material is integral
2 to the reclosable fastener structure.

Claims 3-5 (Cancelled).

- 1 6. A reclosable bag as defined in Claim 1, wherein said web material of said
2 reclosable bag is substantially comprised of a sheet of a parent film material having
3 predetermined dimensions.

1 7. A reclosable bag as defined in Claim 6, wherein the areas of structural weakness
2 are integral to said parent film.

1 8. A reclosable bag as defined in Claim 1, wherein said areas of structural weakness
2 extend linearly across a predetermined dimension of said sheet of web material.

1 9. A reclosable bag as defined in Claim 8, wherein the predetermined dimension is
2 width.

Claims 10-13 (Cancelled).

1 14. A reclosable bag as defined in Claim 1, wherein said areas of structural weakness
2 extend across a predetermined dimension of said sheet of web material in a
3 predetermined pattern.

Claim 15 (Cancelled).

1 16. A reclosable bag as defined in Claim 1, wherein said areas of structural weakness
2 comprise scoring.

Claim 17 (Cancelled).

1 18. A reclosable bag as defined in Claim 1, wherein said sheet of web material is
2 comprised of a multiple laminate film.

1 19. A reclosable bag as defined in Claim 18, wherein said multiple laminate film
2 includes at least one layer of material comprising a tear path.

Claim 20-74 (Cancelled).

1 75. A pre-packaged cheese bag, said pre-packaged cheese bag comprising:
2 a single sheet of web material having first and second pairs of opposite edges, said
3 first pair of opposite edges being located adjacent each other to define a bottom of said
4 bag, a fold structure located midway between said first pair of opposite edges in said
5 single sheet of web material defining a top of said bag with said second pair of opposite
6 edges respectively defining two opposite sides of said bag, two predetermined tear areas
7 being located essentially parallel to and on opposite sides of said fold structure, an
8 opening being defined between said first pair of opposite edges;
9 a reclosable fastener structure having first and second opposite ends and including
10 two releasably engageable fastener tracks each having a skirt structure of skirt web
11 material extending therefrom, said skirt structures each including a distal margin, said
12 reclosable fastener structure having a notch located at a corner at each of said first and
13 second ends, said notches defining where a corner portion of said reclosable fastener
14 structure that includes an end portion of said engageable fastener tracks has been

15 removed, and wherein the periphery of said notches has been sealed, said distal margins
16 of said skirt structures being respectively coupled to said web material on said opposite
17 sides of said bag at predetermined locations on the sides of said bag which are located
18 intermediate said predetermined tear areas and said first pair of opposite edges;
19 wherein said fastener tracks extend above said tear areas into said fold structure;
20 said two opposite sides of said bag being respectively sealed at said first and second
21 edges to define sides of said bag, said pre-packaged cheese bag being filled with at least
22 one cheese through said opening between said first pair of opposite edges of said sheet of
23 web material, following which said first pair of opposite edges of said sheet of web
24 material are sealed together to enclose the at least one cheese inside said bag.

Claims 76-78 (Cancelled).

1 79. A pre-packaged cheese bag as defined in Claim 75, wherein said skirt web
2 material is integral to said reclosable fastener structure.

Claims 80-81 (Cancelled).

1 82. A pre-packaged cheese bag as defined in Claim 75, wherein said web material of
2 said pre-packaged bag is substantially comprised of a sheet of a parent film material
3 having predetermined dimensions.

1 83. A pre-packaged cheese bag as defined in Claim 75, wherein said two
2 predetermined tear areas comprise two areas of structural weakness and wherein said fold
3 structure is located between and defined by said two areas of structural weakness.

1 84. A pre-packaged cheese bag as defined in Claim 83, wherein said areas of
2 structural weakness are integral to said parent film.

1 85. A pre-packaged cheese bag as defined in Claim 83, wherein said areas of
2 structural weakness extend linearly across a predetermined dimension of said sheet of
3 web material.

1 86. A pre-packaged cheese bag as defined in Claim 85, wherein said predetermined
2 dimension is width.

Claims 87-92 (Cancelled).

1 93. A pre-packaged cheese bag as defined in Claim 75, wherein said areas of
2 structural weakness comprise scoring.

Claims 94-103 (Cancelled).

1 104. A reclosable bag for filling with at least one food product, said reclosable bag
2 comprising:

3 a single rectangular sheet of web material having first, second, third, and fourth
4 edges, said sheet of web material having a fold structure located midway between said
5 first and second edges and two areas of structural weakness which are located in said
6 sheet of web material on opposite sides of said fold structure, said fold structure
7 separating said sheet of web material into front and back sides of said reclosable bag, said
8 first and second edges being located adjacent each other to define an opening
9 therebetween which opening is distally located with respect to said fold;

10 a reclosable fastener structure having first and second opposite ends and having
11 two releasably engageable fastener halves each having a skirt structure of skirt web
12 material extending therefrom, said skirt structures each having a distal margin, said
13 reclosable fastener structure having a notch located at a corner at each of said first and
14 second ends, said notches defining where a corner portion of said reclosable fastener
15 structure that includes an end portion of said engageable fastener tracks has been
16 removed, and wherein the periphery of said notches has been sealed, wherein said distal
17 margin of said skirt structure of one of said fastener halves is coupled to said web
18 material on said front side of said reclosable bag between the one of said areas of
19 structural weakness on said front side of said reclosable bag and said opening, and
20 wherein said distal margin of said skirt structure of the other of said fastener halves is
21 coupled to said web material on said back side of said reclosable bag between the one of
22 said areas of structural weakness on said back side of said reclosable bag and said
23 opening;

24 wherein said fastener halves of said reclosable fastener structure are located above said
25 areas of structural weakness and within said fold structure;
26 said front and back sides of said reclosable bag being sealed at said first and second
27 edges, said reclosable bag being capable of being filled with at least one food product
28 through said opening between said first and second edges, following which said first and
29 second edges are sealed together to enclose the at least one food product inside said
30 reclosable bag.

Claims 105-106 (Cancelled).

1 107. A reclosable bag as defined in Claim 104, wherein said areas of structural
2 weakness define a tear off portion located therebetween, said tear off portion being
3 capable of being removed by tearing along said areas of structural weakness.

1 108. A reclosable bag as defined in Claim 107, wherein at least a substantial portion of
2 said reclosable fastener structure extend beyond the portions of said sheet of web material
3 when said tear off portion has been removed therefrom.

1 109. A reclosable bag as defined in Claim 107, wherein said fastener halves extend
2 beyond the portions of said sheet of web material when said tear off portion has been
3 removed therefrom.

1 110. A reclosable bag as defined in Claim 1, wherein said areas of structural weakness
2 define a tear off portion located therebetween, said tear off portion being capable of being
3 removed by tearing along said areas of structural weakness.

1 111. A reclosable bag as defined in Claim 110, wherein at least a substantial portion of
2 said reclosable fastener structure extends beyond the portions of said sheet of web
3 material opposite said opening when said tear off portion has been removed therefrom.

1 112. A reclosable bag as defined in Claim 110, wherein said releasably engageable
2 tracks of said reclosable fastener structure extend beyond the portions of said sheet of
3 web material opposite said opening when said tear off portion has been removed
4 therefrom.

113.-121. (Cancelled).

1 122. A reclosable bag as defined in Claim 75, wherein said predetermined tear areas
2 define a tear off portion located therebetween, said tear off portion being capable of being
3 removed by tearing along said predetermined tear areas.

1 123. A reclosable bag as defined in Claim 122, wherein at least a substantial portion of
2 said reclosable fastener structure extend beyond the portions of said sheet of web material
3 opposite said opening when said tear off portion has been removed therefrom.

124. A reclosable bag as defined in Claim 122, wherein said fastener tracks extend beyond the portions of said sheet of web material opposite said opening when said tear off portion has been removed therefrom.

125. A reclosable bag for filling with at least one food product, said reclosable bag comprising:

a single sheet of web material having a centrally located fold separating said sheet of web material into a front panel and a rear panel;

said front panel having a top, a bottom, and sides;

said rear panel having a top, a bottom, and sides, said tops of said front and rear panels coinciding at said fold, said sides of said front and rear panels being coupled together, an opening being located between said bottoms of said front and rear panels;

an area of structural weakness located in each of said front and rear panels below said tops of said front and rear panels and extending between at least a substantial portion of said sides of said front and rear panels, the portion of said sheet of web material located intermediate said areas of structural weakness forming a tear off portion; and

a reclosable fastener assembly having first and second opposite ends and extending between said sides of said front and rear panels and comprising first and second interlockable fastener tracks each having a skirt structure of skirt web material extending downwardly therefrom, said skirt structures each including a distal portion, said reclosable fastener assembly having a notch located at a corner at each of said first and second ends, said notches defining where a corner portion of said reclosable fastener

19 assembly that includes an end portion of said first and second interlockable fastener
20 tracks has been removed, and wherein the periphery of said notches has been sealed, said
21 distal portion of said skirt structure of said first fastener track being oriented toward said
22 opening and being coupled to said front panel below said area of structural weakness
23 located in said front panel, said distal portion of said skirt structure of said second
24 fastener track being oriented toward said opening and being coupled to said rear panel
25 below said area of structural weakness located in said rear panel;
26 wherein said first and second interlockable fastener tracks of said reclosable fastener
27 assembly extend completely above said areas of structural weakness, and wherein said
28 reclosable bag is capable of being filled with at least one food product through said
29 opening.

1 126. A reclosable bag as defined in Claim 125, wherein said tear off portion is capable
2 of being removed by tearing along said areas of structural weakness.

1 127. A reclosable bag as defined in Claim 126, wherein at least a substantial portion of
2 said reclosable fastener structure extends beyond the portions of said sheet of web
3 material opposite said opening when said tear off portion has been removed therefrom.

1 128. A reclosable bag as defined in Claim 126, wherein said releasably engageable
2 tracks of said reclosable fastener structure extend beyond the portions of said sheet of

3 web material opposite said opening when said tear off portion has been removed
4 therefrom.

129. (Cancelled).

1 130. A reclosable bag as defined in Claim 125, wherein said fold is located
2 intermediate said areas of structural weakness.

1 131. A reclosable bag as defined in Claim 125, wherein said areas of structural
2 weakness comprise a hermetic seal.

1 132. A reclosable bag as defined in Claim 125, wherein at least a substantial portion of
2 said areas of structural weakness extend in a direction which is generally parallel to said
3 first and second interlockable fastener tracks.

1 133. A reclosable bag as defined in Claim 125, wherein said distal portions of said skirt
2 structures of said first and second fastener tracks are releasably coupled to each other,
3 thereby forming a peelable hermetic seal.

1 134. A reclosable bag as defined in Claim 125, wherein said areas of structural
2 weakness are integral to said web material.

1 135. A reclosable bag as defined in Claim 125, wherein said sheet of web material
2 comprises a multiple laminate film.

1 136. A reclosable bag as defined in Claim 135, wherein said multiple laminate film
2 comprises at least one layer of material comprising said two areas of structural weakness.

1 137. A reclosable bag as defined in Claim 125, wherein areas of structural weakness
2 comprise perforations.

1 138. A reclosable bag as defined in Claim 125, wherein areas of structural weakness
2 comprise microperforations.

1 139. A reclosable bag as defined in Claim 125, wherein areas of structural weakness
2 comprise scoring.

1 140. A reclosable bag as defined in Claim 125, additionally comprising:
2 at least one tear tape structure coupled to said web material and adjacent to at least
3 one of said areas of structural weakness.

1 141. A reclosable bag as defined in Claim 125, additionally comprising:
2 notches in said sides of said front and rear panels which are located adjacent
3 opposite ends of said areas of structural weakness.

142. A reclosable bag as defined in Claim 143, wherein opposite ends of said first and second fastener tracks respectively located at sides of said front and rear panels are sealed together, thereby retaining said slider thereupon.

143. A reclosable bag as defined in Claim 125, additionally comprising a slider that is moveable on said first and second fastener tracks between opposite ends of said first and second fastener tracks to selectively engage said tracks together and disengage said first and second fastener tracks, thereby respectively closing and opening said reclosable bag.

144. A reclosable bag for filling with at least one food product, said reclosable bag comprising:
a single sheet of web material having first, second, third and fourth edges and including a fold structure which is centrally located therein midway between said first and second edges which fold structure separates said sheet of web material into front and rear sides of said reclosable bag, two predetermined tear areas being located in said sheet of web material on opposite sides of said fold structure and defining a tear off hood portion which is located intermediate said two predetermined tear areas, an opening being defined between said first and second edges; and

a reclosable fastener structure having first and second opposite ends and including two releasably engageable fastener halves each having an integral skirt structure of skirt web material extending from a bottom side thereof, said integral skirt structures each having a distal margin, said reclosable fastener structure having a notch located at a

14 corner at each of said first and second ends, said notches defining where a corner portion
15 of said reclosable fastener structure that includes an end portion of said fastener halves
16 has been removed, and wherein the periphery of said notches has been sealed, wherein
17 said distal margin of said integral skirt structure of one of said fastener halves is oriented
18 toward said opening and coupled to said web material between the one of said tear areas
19 and said opening on said front side of said reclosable bag, and wherein said distal margin
20 of said integral skirt structure of the other of said fastener halves is oriented toward said
21 opening and coupled to said web material between the other of said tear areas and said
22 opening on said rear side of said reclosable bag;

23 wherein said fastener halves extend entirely above said areas of structural
24 weakness into said tear off hood portion;

25 wherein said front and rear sides of said reclosable bag are sealed at said third and
26 fourth edges;

27 wherein said tear off hood portion is capable of being removed by tearing along
28 said areas of structural weakness; and

29 wherein said reclosable bag is capable of being filled with at least one food
30 product through said opening between said first and second edges of said sheet of web
31 material, following which said between said first and second edges are sealed together to
32 enclose the at least one food product inside said reclosable bag.

1 145. A reclosable bag as defined in Claim 144, wherein said hood is capable of being
2 removed by tearing along said tear areas.

1 146. A reclosable bag as defined in Claim 145, wherein at least a substantial portion of
2 said reclosable fastener structure extends beyond the portions of said sheet of web
3 material opposite said opening when said tear off hood has been removed therefrom.

147. A reclosable bag as defined in Claim 145, wherein said fastener tracks extend
beyond the portions of said sheet of web material opposite said opening when said tear
off hood has been removed therefrom.

X. Evidence Appendix

None.

XI. Related Proceedings Appendix

There is an appeal pending regarding U.S. Application No. 10/300,355, a division of the present application. There was also an interference regarding U.S. Patent No. 6,360,513, of which the present application is a division. A copy of the order resulting from Patent Interference No. 105,529 is attached.